

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

LOREN CHARLES JANOSKY v. STATE OF TENNESSEE

**Appeal from the Criminal Court for Davidson County
No. 2002-D-1993 J. Randall Wyatt, Jr., Judge**

No. M2006-01559-CCA-R3-PC - Filed April 19, 2007

The Petitioner, Loren Charles Janosky, appeals from the order of the trial court denying his petition for post-conviction relief. The State has filed a motion requesting that this Court affirm the trial court's denial of relief pursuant to Rule 20 of the Rules of the Court of Criminal Appeals. Because the trial court did not err by dismissing the petition for post-conviction relief as time-barred, we grant the State's motion and affirm the judgment of the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed
Pursuant to Rule 20, Rules of the Court of Criminal Appeals**

DAVID H. WELLES, J., delivered the opinion of the court, in which JERRY L. SMITH and ROBERT W. WEDEMEYER, JJ., joined.

Loren Charles Janosky, Pro Se.

Robert E. Cooper, Jr., Attorney General and Reporter; Brent C. Cherry, Assistant Attorney General; Victor S. Johnson, III, District Attorney General; and Mark A. Fulks, Assistant District Attorney General, for the appellee, State of Tennessee.

MEMORANDUM OPINION

The record before this Court reflects that on November 3, 2003, the Petitioner entered pleas of guilty and was convicted of two counts of aggravated rape and one count of especially aggravated kidnapping. Pursuant to his plea agreement, he was sentenced to concurrent terms of eighteen years for each offense.

On June 28, 2006, the Petitioner filed a motion to withdraw his guilty pleas, a motion to reopen a petition for post-conviction relief which the Petitioner had filed and subsequently withdrawn in 2004, and a new petition for post-conviction relief. The principal allegations supporting these pleadings were that the Petitioner's guilty pleas were not knowingly and voluntarily entered due to ineffective assistance of counsel and prosecutorial misconduct.

In its order dismissing the motion and petitions seeking relief, the trial court noted that in 2004 the Petitioner had requested to withdraw his original petition for post-conviction relief and that the petition was dismissed “with prejudice.” The trial court further noted that the motion to withdraw the pleas of guilty was filed over two years after the judgments of conviction became final and the motion was therefore untimely. See Tenn. R. Crim. P. 32(f). The trial court also found that the Petitioner had not alleged grounds that would entitle him to re-open his previous petition for post-conviction relief. See Tenn. Code Ann. § 40-30-117. The trial court further noted that the petition for post-conviction relief filed on June 28, 2006 was barred by the applicable statute of limitations. See Tenn. Code Ann. § 40-30-102(a). For these reasons, the trial court denied the Petitioner’s motion to withdraw his guilty pleas, his motion to re-open his previous post-conviction petition, and his petition for post-conviction relief. It is from the order denying relief that the Petitioner appeals.

On appeal, the Petitioner presents one issue: that he received the ineffective assistance of counsel at the time he entered his pleas of guilty pursuant to his plea agreement. Within his argument of ineffective assistance of counsel, he also asserts that the assistant district attorney who represented the State, along with the law enforcement officers, were “equally criminally liable” for prosecuting a case without probable cause or material evidence and for using perjured false testimony.

We conclude that the trial court did not err in determining that the Petitioner’s motion to withdraw his guilty pleas should be denied because the motion was untimely. See Tenn. R. Crim. P. 32(f). We further conclude that the trial court did not err in finding that the Petitioner’s petition for post-conviction relief was barred by the applicable statute of limitations. See Tenn. Code Ann. § 40-30-102(a). On appeal, the Petitioner does not argue that he has grounds allowing him to re-open his previous petition for post-conviction relief, and we agree that he does not. See Tenn. Code Ann. §40-30-117.

We conclude that the trial court did not err by summarily denying the Petitioner’s petitions seeking relief from his November 3, 2003 convictions. Accordingly, the State’s motion is granted and the judgment of the trial court is affirmed in accordance with Rule 20, Rules of the Court of Criminal Appeals.

DAVID H. WELLES, JUDGE